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Nadine Voigt

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER

YU, GINA C

ART UNIT

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1617

NOTIFICATION DATE

DELIVERY MODE

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Continuation of No. 11:

FAVRE in view of Cosmetic Additives

Applicant asserts that there is no motivation for a skilled artisan to replace the non-ionic sorbitan monostearate 20 EO co-emulsifier in the composition of Example 5 of Favre with a primary emulsifier such as anionic triceteareth-4 phosphate. Applicant argues that the teaching in Cosmetic Additives does not explicitly teach fast absorption aiding property of the emulsifier, but rather it merely states "fast absorption into skin" without further explanation. The reference clearly indicates that triceteareth-4 phosphate is a common oil-in-water emulsifier for cosmetic creams and lotions and further lists the benefits and properties of the emulsifier. It is obvious that the presence of the additional emulsifier will further stabilize the Favre emulsion, and it would be within the skill of the art to manipulate the prior art teaching to make a more stable emulsion with enhanced absorption to the skin. Examiner is not persuaded that addition of an well known emulsifier to a prior art emulsion is a nonobvious invention.

Applicant also asserts that the absorption rate depends not on the emulsifier but also on the remaining components of the composition, such as thickener and pigments. Applicant further argues that "there is no point in adding a compound which aids in the fast absorption of a composition". The argument is unpersuasive, as the composition in fact contains water and emollient oils (apricot oil) that should be absorbed by the skin upon the application.

Favre and Cosmetic Additives further in view of Cosmetic Toiletry

Formulation

Applicant asserts that the compositions of Favre and Cosmetic Toiletry Formulation do not share any common features other than containing water and Carbomoer 980. The argument is unpersuasive, because both compositions are in oil-in-water formulations which would have suggested a skilled artisan how much of oil-in-water emulsifiers, such as triceteareth-4 phosphate, are used to enhance the stability of the emulsion.

Favre in view of Muller

Applicant points out to the disclosure in Favre which states, "it may optionally also comprise a surfactant, although it is not necessary in order to obtain a stable and fine emulsion". The statement there does not teach against or negate a motivation to use a surfactant such as glyceryl stearate citrate, but indicates that it is envisioned that a skilled artisan would be motivated to use surfactants to make a stable and fine emulsion. Again, applicants' remark that the compositions of Favre and Muller share 'virtually nothing in common' is incorrect because both prior arts teach oil-in-water emulsions, which would have rendered obvious to a skilled artisan that these are analogous arts. As for the difference of the surfactant amounts that are used in the prior arts, examiner takes the position that discovering an optimal weight amount of the surfactant by routine experimentations would have been well within the skill of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605.

The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1617